

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>CAROLYN HERZ SRIVASTAVA,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:10-0082</b>
	)	
<b>v.</b>	)	<b>JUDGE HAYNES</b>
	)	
<b>BLAKEFORD AT GREEN HILLS</b>	)	
<b>CORPORATION, VAN CLUCK, PATRICIA</b>	)	
<b>MORELL, ARNOLD BIENSTOCK, ERIC</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>BRAM, JONATHAN ADLAND, ORA HIRSCH</b>	)	
<b>PESCOVITZ, and DAVID F. HAMILTON,</b>	)	
<b>Defendants.</b>	)	

**MOTION TO SUBSTITUTE UNITED STATES AS DEFENDANT**

The United States of America moves the Court to substitute the United States for the individual federal defendant, David F. Hamilton, as to plaintiff's state law tort claims in the above styled action.

Title 28 U.S.C. § 2679(d)(1) mandates substitution of the United States as defendant in tort actions in which the Attorney General or his designee has certified that the defendant was acting within the scope of his federal employment at the time of the incident giving rise to suit. The Attorney General has delegated this certification authority to the United States Attorney. *See* 28 C.F.R. § 15.4(a) ("The United States Attorney for the district where the civil action or proceeding is brought ... is authorized to make the statutory certification that the Federal employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose.").

The United States Attorney for the Middle District of Tennessee has certified that David F. Hamilton was acting within the scope of his federal employment at the time of the events giving rise to this case. That Certification is filed concurrently with this motion. Substitution is thus mandated by 28 U.S.C. § 2679(d)(1) as to plaintiff's state law tort claims for intentional infliction of emotional distress (Count III; *see* complaint ¶ 52) and fraud (Count IV; *see* complaint ¶ 53).

Respectfully submitted,

EDWARD M. YARBROUGH  
UNITED STATES ATTORNEY  
MIDDLE DISTRICT OF TENNESSEE

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### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been served, by electronic means, via the U.S. District Court's system, if registered, otherwise by First Class Mail postage prepaid, this 9<sup>th</sup> day of April 2010, on:

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